

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
IP-Enabled Services	)	WC Docket No. 04-36

**REPLY COMMENTS OF THE  
MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL**

Pursuant to the revised procedural notice issued by the Federal Communications Commission (“Commission” or “FCC”) on June 9, 2004 (DA 04-1685), the Massachusetts Office of the Attorney General (“Massachusetts Attorney General”), submits these Reply Comments.

Respectfully submitted

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## **I. SUMMARY OF REPLY COMMENTS**

In this docket, the Federal Communications Commission (“Commission” or “FCC”) faces critical issues that are likely to determine the prices and quality of future voice telephony in the United States. Voice over Internet Protocol (“VoIP”) and Internet Protocol (“IP”)-enabled service offerings are the focus of the Commission’s investigation because consumers and phone companies are beginning to replace their traditional phone service, which transmits calls over the public switched telephone network (“PSTN”), with VoIP phone service, which uses the Internet to make and complete phone calls.<sup>1</sup> IP-enabled offerings include both services and applications that use Internet Protocol. VoIP is a group of IP-based voice services, ranging from Pulver's Free World Dialup (FWD) to services more like today's circuit telephone service, such as Vonage's offering. Consumers will use IP-based applications to increase the functionality of their voice services through call management or other means.

Classifying VoIP and IP-enabled services within the existing federal regulatory framework is the Commission’s first critical step in determining VoIP’s appropriate regulatory treatment under the Commission’s “Title I” jurisdiction<sup>2</sup> and “Title II” jurisdiction.<sup>3</sup> In general, the Commission should subject VoIP services to Title II regulation unless the VoIP services fall within the narrow parameters the Commission set forth in its “Pulver Decision,” where it classified Pulver’s “Free World Dialup” services as a Title I information service.<sup>4</sup>

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<sup>1</sup> *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking (rel. Mar. 10, 2004) (“NPRM”), p. 2.

<sup>2</sup> Title I refers to information services as defined in 47 U.S.C. § 153(20).

<sup>3</sup> Title II refers to telecommunication services described in 47 U.S.C. § 153 (46).

<sup>4</sup> *Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications*

The Commission should keep privacy concerns and law enforcement needs in mind in setting VoIP regulations. The Commission should maintain the viability of state and federal universal service funds (“USF”) by ordering Title II VoIP services to contribute to USF in the same manner as other Title II telecommunications carriers. The Commission should require VoIP service providers to create and market uniform network service quality standards. The Commission should apply the traditional Title II “dominant” classifications to VoIP services bundled by dominant telecommunications carriers.

The Commission should protect consumers by requiring both Title I and Title II VoIP service providers to comply with state and federal customer service quality, slamming, cramming, spamming, do not call, billing and termination, market exit, and truth-in-billing requirements. Finally the Commission should set its policy goals now because the transition by PSTN operators of their switched-access customer base to an Internet-based operation may leave the late-choosing consumers with higher costs and reduce overall customer service quality standards.

## **II. REPLY COMMENTS**

### **A. The Commission Should Categorize VoIP Services as Title II Telecommunication Services if the VoIP Service Provider Controls the Call.**

Congress defines “telecommunications,”<sup>5</sup> “telecommunications service”<sup>6</sup> and

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*Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order (rel. Feb. 19, 2004) (“Pulver Order”).

<sup>5</sup> 47 U.S.C. § 153(43).

<sup>6</sup> 47 U.S.C. § 153(46).

“information service”<sup>7</sup> and provides that telecommunications companies must offer telecommunications services directly to the public for a fee, and customers must define the information and choose the recipient location(s) with no net change occurring in the information form or content.<sup>8</sup> An “information service” under Title I does not include the capability for the management, control or operation of a telecommunications system or the management of a telecommunications service.<sup>9</sup>

The Commission seeks comments on what Title I or Title II regulations, if any, should apply to various VoIP services based on the VoIP service’s characteristics and functions.<sup>10</sup> The Massachusetts Attorney General offers the following categorization.

### **1. Title I Information Services**

At one end of the VoIP spectrum is the group of VoIP services and applications that resemble pulver.com’s Free World Dialup (“FWD”) service, whose characteristics the Commission described as Title I information services:<sup>11</sup>

- No fee
- Closed subscribership, no access to and from PSTN
- No management, control or operation of call
- May or may not use North American Numbering Plan numbers
- Initiated and terminated as an IP call
- No net change to information form or content

Pulver’s FWD VoIP service is not offered for a fee. Customers define the location of the called party (end-point), but Pulver restricts their choice to its subscribers. From a customer

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<sup>7</sup> 47 U.S.C. § 153(20).

<sup>8</sup> 47 U.S.C. § 153(46).

<sup>9</sup> 47 U.S.C. § 153(20)

<sup>10</sup> NPRM, ¶ 35.

<sup>11</sup> Pulver Order.

viewpoint, it is strictly an end-to-end IP service with no access to the Public Switched Telephone Network (PSTN) or its customers. There is no net change in information form or content. The Commission determined that Pulver does not manage, control, or operate the system that completes the call; rather, Pulver merely provides a free look-up service for its subscribers. The Commission found that Pulver had a very limited role in managing the call, so the Commission will regulate this class of IP services under Title I as an information service.<sup>12</sup> As an information service, pulver.com's FWD service is not subject to state certification, tariffing, or other state economic regulation but remains under the Commission's jurisdiction.<sup>13</sup>

## **2. Title II Telecommunications Services.**

At the other end of the spectrum, the Commission should classify VoIP services that allow their customers to initiate and receive calls on the PSTN as Title II telecommunications services and should exercise extreme caution before exempting VoIP services from Title II regulations. These VoIP services share common characteristics:

- Fee charged
- Access to and from PSTN, public internet, and private IP networks
- Management, control and operation of call
- North American Numbering Plan numbers
- Uses public internet or private IP network
- Initiated or terminated as an IP call
- No net change to information form or content

The calling capability includes local, in-state toll, and long-distance and provides all of the functionality of a traditional telephone line.<sup>14</sup> For example, AT&T's VoIP service,

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<sup>12</sup> Pulver Order, ¶ 19.

<sup>13</sup> Pulver Order, ¶ 25. The Commission did not address clearly whether non-economic regulations should apply to Title I VoIP services.

<sup>14</sup> The characteristics and interstate/intrastate nature of an individual call may be difficult if not impossible to determine absent additional usage studies.

CallVantage, operates primarily on a private IP network.<sup>15</sup> This type of private IP telecom services begins and/or ends as an IP call, operates over a private packet network, and interconnects with other suppliers' services that use the public Internet network or the PSTN.<sup>16</sup>

Therefore, the Commission should classify VoIP services as Title II telecommunications services, rather than Title I information services, if the VoIP service provider manages or controls the call.

**B. The Commission Should Not Eliminate All VoIP Regulatory Oversight.**

The transition from the PSTN to VoIP is on the same level as past transitions such as the introduction of crossbar, electronic and digital switching, Time Division Multiplex ("TDM"),<sup>17</sup> and Synchronous Optical Network ("SONET")<sup>18</sup> transmission systems. The introduction of VoIP service, however, differs from other transitions because regulators and providers lack control over the market due to the lower barriers to entry with this technology. While the Commission may want to exempt VoIP services from Title II regulation under its forbearance authority,<sup>19</sup> the Commission cannot ignore the low income, rural, and segments of the population that have difficulty adapting to this technological change.

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<sup>15</sup> See <http://www.att.com/voip>.

<sup>16</sup> RNK Telecom, another VoIP provider currently offering service in New England, appears to fall within Title II. See <http://www.mkvoip.com>.

<sup>17</sup> TDM is a "technique for transmitting a number of separate data, voice and/or video signals simultaneously over one communications medium by interleaving a piece of each signal one after another." Newton's Telecom Dictionary (19th ed.), p. 807.

<sup>18</sup> SONET is a "family of fiber optic transmission rates ... created to provide the flexibility needed to transport many digital signals with different capacities, and to provide a design standard for manufacturers." *Id.* at 739.

<sup>19</sup> 47 U.S.C. § 160.

Other commenters have addressed whether to grant VoIP service forbearance from traditional Title II economic regulations.<sup>20</sup> Even if the Commission decides to exercise only limited economic regulation on Title II VoIP services, the Commission should impose certain regulations that reflect generally recognized consumer protections and policies that consumers deserve and expect, even in an unregulated environment.

**1. Customers Expect VoIP Service Providers to Respect Their Privacy.**

The Commission should assure consumers' reasonable expectations of privacy in their use of VoIP services. Customers expect that others will not view their stored voice mails or other customer proprietary network information ("CPNI") data without their affirmative opt-in consent, so the Commission should extend the privacy protections afforded under Title II to VoIP services. Under federal CPNI rules, Title II common carriers may "only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories."<sup>21</sup> The VoIP commenters who resist complying with the CPNI rules have not provided adequate reason to compromise consumer privacy rights simply because of a technology change.

The Commission should exercise its jurisdiction to require Title II VoIP services to comply with the Communications Assistance for Law Enforcement Act ("CALEA") and related

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<sup>20</sup> See, e.g., MCI comments at 3; NASUCA comments at 2.

<sup>21</sup> 47 U.S.C. § 222(c)(1).



law enforcement statutes.<sup>22</sup> The Department of Justice, in its comments, stated that past experience has demonstrated that voluntary compliance for a statutory mandate like CALEA is inadequate.<sup>23</sup> Most of the other commenters agreed.<sup>24</sup> This policy will provide law enforcement with the maximum benefit while maintaining a level playing field among VoIP competitors. The necessity of allowing court-authorized wiretaps has already been established with CALEA. If the Commission does not provide for this capability, it will effectively take this capability away from law enforcement. A change in technology should not be allowed to reduce either existing privacy rights or law enforcement capabilities and priorities. Changes to these important areas should be accomplished either by the courts, by legislation, or, at a minimum, in a separate Commission docket dedicated to that purpose.<sup>25</sup>

The Commission should also keep in mind the dangers posed by “data mining”<sup>26</sup> and “spyware”<sup>27</sup> when setting VoIP regulations, especially in the context of voicemail stored as e-

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<sup>22</sup> 47 U.S.C. §§ 1002.

<sup>23</sup> U.S. Department of Justice comments at iii.

<sup>24</sup> See, e.g., Verizon comments at 48; Citizens Utility Board at 28, 29.

<sup>25</sup> The Commission is currently reviewing whether CALEA should apply to IP-enabled services in another docket. *Comment Sought on CALEA Petition for Rulemaking filed by the FBI, U.S. Department of Justice and U.S. Drug Enforcement Administration*, ET RM 10865 (filed Mar. 10, 2004).

<sup>26</sup> “Data miner: A software application that monitors and/or analyzes the activities of a computer, and subsequently its user, of the purpose of collecting information that typically will be used for marketing purposes. The two most common forms of data miners are data mining programs that an organization uses to analyze its own data to look for significant patterns, and spyware programs that are uploaded to a user’s computer to monitor the user’s activity and send the data back to the organization, typically so that the organization can send the user targeted advertising.” Definition provided by Small Business Computing.com at: [http://sbc.webopedia.com/TERM/D/data\\_miner.html](http://sbc.webopedia.com/TERM/D/data_miner.html) (accessed July 5, 2004).

<sup>27</sup> “Spyware: Any software that covertly gathers user information through the user’s Internet connection without his or her knowledge, usually for advertising purposes. Spyware applications are typically bundled as a hidden component of freeware or shareware programs that can be downloaded from the Internet; however, it should be noted that the majority of shareware and freeware applications do not

mail. Spyware can monitor a consumer's destinations and keystrokes while online, and use this information to customize advertising to a particular consumer in its less offensive forms, and hijack the consumer's browser or display inappropriate, potentially illegal "pop-ups" in its more outrageous manifestations.<sup>28</sup> The dangers to consumer privacy posed by spyware were discussed in recent hearings by the Committee on Energy and Commerce of the U.S. House of Representatives.<sup>29</sup> If spyware is used to monitor customer calling patterns, the results could be disastrous because groups could use it to search for individuals fitting particular characteristics based on Internet search habits, and then have access to an individual's identity as well as their family, friends and business contacts. This "reverse searching," or starting with characteristics and looking for matches rather than matching individuals to specific advertising, is the type of activity that the Commission needs to monitor.

## **2. Title II VoIP Services Should Contribute to USF, Have Network Service Quality Standards, and Follow Dominant Status Rules.**

The 1996 Telecommunications Act considers basic telecommunications services to be

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come from spyware. ... Licensing agreements that accompany software downloads sometimes warn the user that a spyware program will be installed along with the requested software, but the licensing agreements may not always be read completely because the notice of a spyware installation is often couched in obtuse, hard-to-read legal disclaimers." Definition provided by Small Business Computing.com at: <http://sbc.webopedia.com/TERM/s/spyware.html> (accessed July 6, 2004).

<sup>28</sup> "Once installed, the spyware monitors user activity on the Internet and transmits that information in the background to someone else. Spyware can also gather information about e-mail addresses and even passwords and credit card numbers. ... Because spyware exists as independent executable programs, they have the ability to monitor keystrokes, scan files on the hard drive, snoop other applications, such as chat programs or word processors, install other spyware programs, read cookies, change the default home page on the Web browser, consistently relaying this information back to the spyware author who will either use it for advertising/marketing purposes or sell the information to another party." Definition provided by Small Business Computing.com at: <http://sbc.webopedia.com/TERM/s/spyware.html> (accessed July 6, 2004).

<sup>29</sup> See HB 2929 (2003), Safe Guard Against Privacy Invasions Act.

essential.<sup>30</sup> As with most technology issues, the question of what is essential continues to evolve. If we assume that IP-enabled services will become the basic service of the Public Telephone network of the future, then USF low-income and high-cost support for VoIP becomes a high priority. To avoid leaving segments of our society behind as technology advances, our definition of “essential” must be flexible. Most consumers would agree that being able to make emergency 911 and E911 calls (doctor, police, fire, etc.) is essential to their well-being. The technology behind this basic service has changed by providing many other capabilities in addition to basic telephone service, but it is still an essential service. If a consumer chooses to use a Title II VoIP broadband access line for basic telephone service, then the consumer should contribute to the applicable state and federal universal service funds (“USF”).

Comcast, USTA, and the Texas Attorney General’s Office correctly recognized the need to extend USF obligations to Title II VoIP services.<sup>31</sup> The Commission should require VoIP providers to comply with federal and state USF as do traditional PSTN common carriers. Commenters such as VON Coalition<sup>32</sup> who insist that their services should not fund these important obligations, or who suggest that such regulation is unnecessary, would short-change the beneficiaries of these program and avoid their fair share of the maintenance responsibilities. The Commission should require all Title II VoIP services to contribute to federal and state USF.

The Commission should require Title II VoIP service providers to create and adopt uniform federal network service quality standards -- the technical standards for prioritizing voice

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<sup>30</sup> 47 U.S.C. § 254(c)(1).

<sup>31</sup> Comcast comments at 8, 15; USTA comments at ii; Texas Attorney General’s Office comments at 3.

<sup>32</sup> VON Coalition comments at 26, 27.

versus data packets so that call quality is clear. Network service quality is different, in terms of this discussion, from typical notions of customer service quality (e.g., the length of time it takes for the service provider to answer the phone or to fix a repair problem). The Commission should also consider how consumers could make informed decisions about network service quality before committing to extended contracts with VoIP providers. A common complaint about VoIP services is the “delay” factor -- when the caller’s voice does not arrive on time (in packet sequence) because of inadequate network service quality. An alternative technique would be to allow Title II VoIP providers to set their own network service quality standards but require the providers to publish the standards in a uniform manner using uniform measures, along with their pricing information. Another technique would be to require all Title I and Title II VoIP service contracts to clearly and conspicuously disclose all material terms and conditions, including the cancellation and return policies. In a competitive market, this will give consumers the appropriate information to use in their decision-making process for VoIP services.

Furthermore, the Commission should carry over its “dominant” classification rules under Title II and similar regulatory frameworks to VoIP providers who, as dominant carriers, bundle their VoIP products with other services, such as local or long distance telecommunication services. While commenters including Verizon, SBC and Comcast may contend that they have no market power for selling VoIP products,<sup>33</sup> they will not hesitate to use their embedded customer bases and customer account data to market and bundle their VoIP services. The Commission should recognize that the large database gives the dominant providers a competitive

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<sup>33</sup> See Verizon comments at 11; SBC comments at 1, 2.

advantage over others.<sup>34</sup> Furthermore, the Commission should conduct individualized reviews of requests for relief from Title II Section 251(C) dominance mandates, rather than giving a sweeping exemption, because dominance can be market-specific, as some carriers recognize.<sup>35</sup>

### **3. All VoIP Services Providers Must Comply With State and Federal Consumer Protection Measures.**

Several commenters argue that requiring VoIP services to comply with state consumer protection standards is too cumbersome and too costly.<sup>36</sup> The Commission should reject these arguments and allow states to establish and enforce their state service quality and other consumer protection standards. As NASUCA noted, “If consumers discover that they cannot rely on their VoIP phones to contact emergency personnel, or rely on VoIP service providers’ marketing representations and promises, or understand their VoIP billing statements, or count on IP-enabled services to protect their Customer Proprietary Network Information (“CPNI”) and privacy, then consumers will eventually stop purchasing VoIP products and the VoIP industry will falter.” NASUCA comments at 45.

#### **a. 911, Enhanced 911, and Disability Access Are Critical.**

Of all the consumer protection services a VoIP service can perform for a consumer, none is as critical as the ability to reach, and be located by, emergency personnel. Most commenters realized this proposition<sup>37</sup> and some, such as VON Coalition, are working with the National

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<sup>34</sup> NASUCA succinctly summarizes this perspective: “Because of the aggressive bundling and win-back programs of most ILECs, their underlying market position will not change simply because they use a more efficient network protocol and migrate to VoIP.” NASUCA Comments at 37.

<sup>35</sup> See, e.g., Qwest’s petition to be treated as a nondominant carrier in the Omaha, NB MSA, WC Docket No. 04-223 (filed June 21, 2004).

<sup>36</sup> See, e.g., 8x8 comments at 30; VON Coalition comments at 28, 29.

<sup>37</sup> See, e.g., Comcast comments at 8; Verizon comments at 51.

Emergency Number Association (NENA) and other emergency personnel to craft E911 solutions for the various VoIP services.<sup>38</sup> Above all requirements, VoIP customers must be able to contact fire, police, and medical help. The Commission should require Title I and Title II VoIP services to comply with federal and state 911 and E911 regulations.

While many commenters agreed that VoIP should be accessible to people with disabilities,<sup>39</sup> the VON Coalition asserts that disability access should result from voluntary agreements, rather than mandatory FCC regulations.<sup>40</sup> Comcast subscribes to a “hands-off” regulatory regime that relies on the power of the competitive marketplace to deliver the services that consumers want and need.”<sup>41</sup> The Commission should not rely solely on voluntary industry efforts. A “hands-off” approach may not satisfy all consumers’ needs, especially those of the oft-neglected disabled.<sup>42</sup> The American Foundation for the Blind (AFB) predicts that even the most advanced providers “will not take steps required to make those network features and products fully accessible unless the Commission ensures functional parity and technology neutrality.”<sup>43</sup> The Commission should require that providers make all VoIP and ancillary IP-

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<sup>38</sup> See, e.g., VON Coalition comments at 25.

<sup>39</sup> Verizon comments at 47, 48; VON Coalition comments at 12, 25; Comcast comments at 8, 15; California Public Utilities Commission comments at ii; Communication Service for the Deaf, Inc. Comments at ii.

<sup>40</sup> VON Coalition comments at 1, 25.

<sup>41</sup> Comcast comments at 17.

<sup>42</sup> For example, Inclusive Technologies asserts that one leading VoIP service provider has designed a peer-to-peer software application that is “completely incompatible with screen readers and provides no support for screen magnification utilities.” Inclusive Technologies comments at 7. Other VoIP providers require their users to perform visual tests in order to register, or use touchscreens to navigate through the software – features that will ostracize a significant number of disabled persons.

<sup>43</sup> American Foundation for the Blind comments at 2, 3.

enabled services accessible to persons with disabilities and should oversee industry and disabilities group efforts to ensure timely implementation of disability access standards.

Past and anticipated market inadequacies illustrate the need for backward compatibility.<sup>44</sup> Backward compatibility should be retained because it allows disabled consumers to benefit from these emerging VoIP technologies and services while enabling them to retain their primary, and perhaps exclusive, means of communication. The Commission should decide whether VoIP services should be classified as “information services” or “telecommunication services” for regulatory purposes. From a disabilities standpoint, however, there is no functional difference between these two groupings. As noted by the Communication Service for the Deaf, “the regulatory classification of IP-enabled services should turn on its functionalities, not on the nature of its underlying transmissions or the technologies used to send those transmissions.”<sup>45</sup> The Commission should apply federal disability protections, such as those under 47 U.S.C. § 255, to all IP-enabled services, not just VoIP services, because such “information services” are a necessary means to a compelling “telecommunications” end.

**b. States Must Be Able To Enact Customer Service Quality Standards and Other Consumer Protection Rules.**

VoIP providers who market their services as substitutes for traditional local and long distance telephone services create customer expectations that will require the Commission to

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<sup>44</sup> See, e.g., NASUCA’s initial comments which encouraged the Commission to create forward-looking standards and regulations that provide for backward compatibility “for those consumers with disabilities who cannot afford or will not purchase PCs and Internet connections but choose instead to continue to use Text Telephones (TTYs) over the traditional PSTN.” NASUCA comments at 64.

<sup>45</sup> Communication Service for the Deaf comments, at ii.

apply certain Title II consumer choice and consumer protection rules.<sup>46</sup> The Commission should allow states to exert jurisdiction over Title I and Title II VoIP services for customer service quality, slamming,<sup>47</sup> cramming, spamming,<sup>48</sup> do not call,<sup>49</sup> billing and termination,<sup>50</sup> and market exit rules.<sup>51</sup> This will ensure that no VoIP provider can wrongfully mistreat customers, switch customers' service without their authorization, bill or contact customers without their consent, and comply with state market exit rules.

State customer service quality standards and consumer protection laws exist to protect consumers from inadequate service, fraud, misrepresentations, and unfair trade and deceptive advertisements and practices. Many commenters correctly urged the Commission to retain state jurisdiction over service quality standards and enforcing state consumer protection laws.<sup>52</sup>

These rules are already in place to keep companies from misrepresenting their services and from

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<sup>46</sup> The NASUCA approach, in this respect, is appropriate.

<sup>47</sup> See, e.g., M.G.L. c. 93, §§ 108-113 (Massachusetts slamming laws); 47 U.S.C. § 64 (Federal slamming laws).

<sup>48</sup> 15 U.S.C. §§ 7700 et seq. (Federal CAN-SPAM / unsolicited e-mails Act)

<sup>49</sup> See, e.g., M.G.L. c. 159C (Massachusetts do-not-call laws);

<sup>50</sup> See, e.g., Massachusetts DTE Residential Billing and Termination Practices for Telecommunications Companies, D.P.U. 18448, available on-line at <http://www.mass.gov/dte/telecom/18448.pdf> ("Any provider of intrastate telecommunications services in Massachusetts must comply with certain billing and termination practices for presubscribed residential customers").

<sup>51</sup> See, e.g., Massachusetts DTE Mass Migration Requirements, D.T.E. 02-28 (enacted Aug. 7, 2002), available at <http://www.mass.gov/dte/telecom/02-28/87finmmr.pdf>. Several Massachusetts CLEC bankruptcy cases have demonstrated the necessity of requiring local exchange carriers (those who offer local service) to comply with state exit notice requirements. See, e.g., *In Re AltiComm, Inc.*, U.S. Bankr. Ct. (E.D. Mass), Case No. 04-14803 (pending); *In Re Servisense.com, Inc.*, U.S. Bankr. Ct. (E.D. Mass.), Case No. 01-6539 (pending); *In Re Network Plus, Corp.*, U.S. Bankr. Ct. (D. Del.), Case No. 02-10341; *Broadview Networks, Inc.*, D.T.E. 02-14, Order (2002);

<sup>52</sup> See, e.g., Texas Attorney General comments at 3; California PUC comments at iii, 43; Vermont PUC comments at 38; Arizona PUC comments at 13.



inducing consumers to purchase telephony services under false pretenses. Market forces alone are insufficient to prevent either Title I or Title II VoIP service providers from maximizing their profits by minimizing their service quality.

**c. VoIP Services Should Not Be Exempt From Truth-in-Billing Rules.**

The Commission should also require VoIP providers to comply with the Commission's truth-in-billing (TIB) standards and any modifications of those standards so that consumers can clearly and easily understand their bills. The Commission currently is reviewing its TIB standards in the context of a petition filed by the National Association of State Utility Consumer Advocates.<sup>53</sup> The Commission should require all Title I and Title II VoIP services to comply with TIB standards.

**C. The Commission Should Avoid Reducing Service Penetration During Transition to VoIP.**

The Telecommunications Act of 1996 was very clear in setting high penetration as a goal for regulators: "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."<sup>54</sup> In order to maintain the high level of penetration, the Commission needs to manage the transition to VoIP so that consumers remaining on the PSTN are not subject to

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<sup>53</sup> See *National Association of State Utility Consumer Advocates Petition for Declaratory Ruling*, CG Docket No. 04-208 (filed Mar. 30, 2004).

<sup>54</sup> 47 U.S.C. § 254(b)3.

unreasonable prices or degraded service quality.

**1. The Commission Should Ensure Access to the PSTN, Fairly Compensate For Access, and Provide a Floor for Service Quality.**

Consumer safeguards must be established to ensure that PSTN performance and availability at existing prices are not jeopardized by stranded investment, marketing strategies, and/or technology gaps for specialized segments of the population. As additional segments of the public have the opportunity to move to the VoIP network, compensation for calls originating from and terminating on the PSTN will continue to be a major issue. Comments from the ILECs understandably support this position, but there is also major support elsewhere. For example, Sprint, the New Jersey Division of the Ratepayer Advocate, the Ohio Public Utilities Commission, and the Independent Telephone and Telecommunications Alliance (“ITTA”) all support fair compensation by VoIP providers for calls using the PSTN.<sup>55</sup> Providers of the remaining PSTN services should be compensated just as they would be if both ends of the call were on the PSTN. The Commission should do what it can to create a level playing field between VoIP service providers (of all sorts) and PSTN telecommunication service providers to ensure an effective transition from a consumer standpoint.

It will be particularly important for the Commission and the states to set customer service quality thresholds as the PSTN declines in use because of customer migration to VoIP. While VoIP providers may balk at having to comply with potentially 50 different state customer service quality standards, their functional equivalent in the PSTN is required to do just that for a very good reason -- customers deserve high quality service. One federal commentator recently argued

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<sup>55</sup> Sprint comments at 2; New Jersey Division of Ratepayer Advocate comments at 1, 2; Ohio Public Utilities Commission comments at 34; ITTA comments at 4.

that regulatory parity among different competing modes of telephony is difficult at best,<sup>56</sup> but VoIP service quality standards will fall dramatically unless the Commission and the states work together to enforce customer service quality.

## **2. The Commission Should Protect Those Who Are Slow to Move From the PSTN to the New VoIP Environment.**

A significant period of time will elapse while some VoIP providers transition their legacy PSTN networks to VoIP. MCI and others argue that it is too early to impose detailed regulations regarding major safety and consumer issues such as disability services and E911 because the technology is still developing.<sup>57</sup> The Commission, however, should establish these requirements now. Providing direction to IP developers at an early stage is an advantage, not a restraint, because it will allow for efficiency without restricting innovation. By avoiding wasted efforts, the Commission can ensure that the resources devoted to this effort are working toward objectives that will reward them in the marketplace. Although most commenters agree that VoIP providers should be required to provide disability services, some point out shortcomings in the VoIP products that make them less effective or impossible to use. Inclusive Technologies, for example, points out several examples where new VoIP services are not disability-friendly.<sup>58</sup> These examples include software problems, visual screen problems, unsatisfactory network performance, missing documentation and customer contact issues.<sup>59</sup> The Commission will

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<sup>56</sup> “Parity Rules: Mapping Regulatory Treatment of Similar Services,” by Sherille Ismail, Senior Counsel, FCC Office of Strategic Planning and Policy Analysis, *Federal Communications Bar Journal*, Vol. 56, No. 3, pp. 447-487 (May 2004). “... although regulatory parity may be a laudable goal it is not an easily achievable goal.” *Id.*, p. 449.

<sup>57</sup> MCI comments at 4.

<sup>58</sup> Inclusive Technologies comments at 7, 8.

<sup>59</sup> *Id.*

protect consumers better if it sets clear guideposts and regulations now, not later.

### **III. CONCLUSION.**

The Commission should classify VoIP services as Title II telecommunication services if the VoIP provider controls the call. The Commission should also and respect industry innovation, protect consumer privacy, preserve public safety, and allow state consumer protection. The Commission should also ensure that those who do not choose to use VoIP services still have affordable access to essential telecommunication services.

Respectfully submitted,

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